

REMARKS

This Amendment is filed in response to the Office Action mailed September 12, 2005, in which the Examiner enters a restriction requirement between claims 1-24 and claim 25-30, rejects claims 1-6 and 15-24, and objects to claims 7-14. The Examiner also requires election between two species, which the Examiner finds patentably distinct. The Examiner also objects to the title for not being descriptive, to trademark use for not being capitalized and to claims 1, 4, 17 and 21 for informalities. Claims 1, 4, 7, 14, 17 and 21 have been amended. Claims 25-30 have been canceled. Claims 1-24 are pending in this application.

The Applicants wish to thank the Examiner for indicating allowable subject matter in claims 7-14. Claim 7 has been placed in independent form, claims 8-13 depend from claim 7 and claim 14 has been amended to depend from claim 7. Accordingly, claims 7-14 are now allowable. Claims 1, 4, 17 and 21 have been amended to correct the informalities to which the Examiner objects. No new matter has been added.

The specification has been amended to update the title, capitalize trademarks and clarify references to figures. No new matter has been added.

Replacement sheets are attached including revisions to Figures 3, 8 and 9. Figure 3 has been revised to add reference numeral 132, Figure 8 to add reference numeral 100, and Figure 9 to replace reference numeral 110 with reference numeral 112. No new matter has been added.

A. Restriction Requirement under 35 U.S.C. § 121.

The Examiner restricts the pending claims between Group I consisting of claims 1-24 and Group II consisting of claims 25-30. The Examiner further requires election between Species A consisting of Figures 1-9 and Species B consisting of Figure 10, to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicants elect Group I and Species A, namely, claims 1-24 and Figures 1-9, for further prosecution in the present application, without prejudice to future prosecution of the non-elected claims and species.

B. Claims Rejection Under 35 U.S.C. § 102(b) and (e) / 103.

The Examiner rejects claims 15, 18 and 24 as being anticipated under § 102(e) by U.S. Patent No. 6,764,704, to Schub. Claim 15 recites a whisk-head adapted to function as a whisk. In contrast, Schub does not disclose a whisk-head. Even if the whipping head 34 were to be analogized to the whisk-head, it is not adapted to function as a whisk. The invention in Schub is essentially a rotating mixer; not a manually manipulated flexible whisk. Claim 15 recites a handle adapted for manual manipulation. In contrast, the handle 22 in Schub is not adapted for manual manipulation. The handle 22 in Schub serves as a housing for the motor 24 and the power source 26. (Col. 3, lines 5-8; Figure 4). A handle that is sized to house a motor and a power source is not adapted for manual manipulation. In operation, the motor 24 is activated and translates rotational motion to the shaft 30 that rotates the rod 28 and whipping head 34, which is simply immersed in a beverage. (Col. 5, lines 29-44). Therefore, it is inherent from the description and figures in Schub that the handle 22 in Schub is not adapted for manual manipulation.

Furthermore, claim 15 recites a coupling positioned between the whisk-head and the handle, the coupling configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use. The Examiner asserts that Schub discloses a coupling 122; however, that structure is a spring 122, which is not configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use. Schub clarifies that the spring 122 provides lateral stability to the rod 28 and the whipping head 34, when in rotation. (Col. 5, lines 53-57).

Further, the flexibility of the spring 122 is described in the context of preventing deflection of the rod 28 and maximizing the rotational speed of the whipping head 34. Schub states that the rod 28 and arm 29 are spaced apart within the spring 122 to provide lateral flexibility for the whipping operation such that when in rotation, sufficient rotational energy will be transferred to the rod and the whipping head, the whipping head centralizing itself based on centrifugal forces and minimizing energy loss from lateral forces. (Col. 6, lines 16-19 and 35-40). Emphasis added. Therefore, the spring 122 actually serves the purpose of minimizing deflection to centralize the whipping head 34 and maximize the rotation speed and forces

necessary for proper whipping, even when the rod 28 and arm 29 are not coaxial or when the rod 28 is bent. (Col. 6, lines 40-46). Schub further states that the spring 122 absorbs shock, so as to prevent bending of the rod 28. (Col. 6, lines 46-47). Emphasis added. Accordingly, Schub fails to disclose a coupling configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use.

In order to support a finding of anticipation, MPEP § 2131 states that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Schub fails to disclose the whisk-head, handle and coupling as claimed in claim 15, Schub does not anticipate claim 15 and claim 15 and all claims dependent therefrom are allowable over Schub.

Furthermore, Schub also fails to render claim 15 obvious under § 103 because Schub does not teach or suggest a whisk-head and a resiliently flexible coupling. In fact, Schub teaches away from a coupling that promotes deflection of the head 34.

The Examiner rejects claims 15, 16 and 18 under § 102 as being anticipated by U.S. Patent No. 5,676,464, to Mattar. However, Mattar also does not disclose a coupling configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use. Emphasis added. In contrast to the present invention and as the specification of that patent clarifies, the flexible connection 30 allows the whisk 28 to both revolve around the whisk 28 centerline and rotate about a circle. (Col. 4, lines 20-23). Emphasis added. Therefore, the connection 30 in Mattar is not resilient and does not allow the whisk 28 to spring back toward its natural position during use. In fact, the invention in Mattar would not operate as intended if the whisk 28 were to spring back during use because the whisk 28 in Mattar is intended to rotate along a circular path, stirring the contents of the pot. See Col. 4, lines 31-46, and Figure 4. Were the connection 30 of Mattar capable of springing back, the whisk 28 of that patent would not rotate along a circular path. Since Mattar fails to disclose each and every element of claim 15, Mattar fails to anticipate claim 15. Accordingly, claim 15 and all claims dependent therefrom are allowable over Mattar under § 102.

Additionally, under § 103, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or

motivation to make the proposed modification. MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Since modifying the invention in Mattar so that the connection springs back toward its natural position during use would render that invention unsatisfactory for its intended purpose, claim 15 and all claims dependent therefrom are also not obvious and thus allowable under § 103 over Mattar.

The Examiner also rejects claims 15, 18, 19 and 24 under § 102 as being anticipated by U.S. Patent No. 2,208,337, to Maslow. Claim 15 recites a coupling configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use. Maslow discloses a retaining spring 3 that is slightly resilient and is provided with an opening 4 to allow the end portion of any one of the loops to pass. (Col. 1, lines 47-52). In contrast to the coupling of the present invention, Maslow does not disclose that the retaining spring 3 is flexible. Furthermore, although Maslow does not clarify why the retaining spring 3 is slightly resilient, from the Figures it can be deduced that the retaining spring 3 is slightly resilient to radially expand to widen the opening 4 and allow the end portion of the loops to pass. The whip of that invention is not intended to deflect and spring back toward its natural position during use because even if the retaining spring 3 allowed such motion, the offset bent portions 11 in the loops, adapted to extend through apertures 9, 10 (Col. 2, lines 15-17) would prevent such motion. Therefore, Maslow simply discloses a conventional whip lacking a resiliently flexible coupling for allowing the whisk-head to deflect and spring back toward its natural position during use.

Further, due to the interaction of the offset bent portions 11 and the apertures 9, 10 in Maslow, the retaining spring 3 of that invention cannot be modified to allow the whip to deflect and spring back toward its natural position during use. Therefore, Maslow also does not teach or suggest a coupling configured to be resiliently flexible for allowing the whisk-head to deflect and spring back toward its natural position during use and claim 15 and all claims dependent therefrom are also not obvious and thus allowable under § 103 over Maslow.

The Examiner further rejects claims 1 and 2 under § 102 as being anticipated by DE 8709442 U1 (the '442 reference). Claim 1 recites a handle having a cover formed about a core, at least a portion of the handle forming a flex zone for biasly permitting deflection of the

whisk-head and urging the whisk-head back toward its natural position while in use. Emphasis added. In contrast, the whisk in the '442 reference is a conventional whisk lacking a flex zone biasly permitting deflection of the whisk-head. The Examiner asserts that the figures in the '442 reference disclose a handle 9 of some inherent flexibility. However, for a picture to constitute enabling prior art, it "must show all the claimed structural features and how they are put together." MPEP 2121.04. In contrast, the figures of the '442 reference do not show a flex zone for biasly permitting deflection of the whisk-head. Conversely, the figures communicate lack of such motion because the pin or bolt 13, which the Examiner analogizes to the cable of the present invention, appears to be rigid, fastening the base 4 of the whisk 2 to the handle 9.

In addition, the '442 reference does not disclose a cable encased within the flex zone for reinforcement thereof as recited in claim 1. Emphasis added. The pin or bolt 13, which by definition is rigid, does not anticipate a cable, which by definition has some flexibility. Even if the pin or bolt 13 were to be analogized to the cable recited in claim 1, as discussed above, the '442 patent does not disclose or enable a flex zone in which the pin or bolt 13 could be encased. Even further, if the base 4 were to be analogized to the flex zone recited in claim 1, the pin or bolt 13 is not encased in the base 4.

Accordingly, the figures of the '442 reference do not show all the claimed structural features and how they are put together and claim 1 and all claims dependent therefrom are allowable under § 102 over the '442 reference. Furthermore, based on the foregoing discussion, the '442 reference also does not teach or suggest the flex zone or the cable of the present invention and claim 1 and all claims dependent therefrom are also allowable over the '442 reference under § 103.

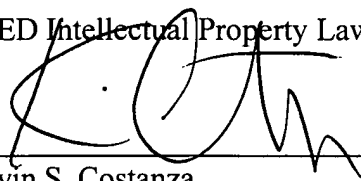
Applicants respectfully submit that all of the claims remaining in the application are now allowable and earnestly solicit favorable consideration and a Notice of Allowance.

Application No. 10/731,980
Reply to Office Action dated September 12, 2005

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



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Enclosure:

Postcard

3 Sheets of Replacement Drawings (Figures 3, 8, and 9)

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Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 3, 8 and 9. These sheets, which include Figures 3, 8 and 9, replace the original sheets including Figures 3, 8 and 9.

Attachment: 2 Replacement Sheets